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WEL-YO

IN THE

Supreme Court of the United States

OCTOBER TERM, 1951.

No. 191

CLIFTON E. WELDON,
Petitioner,

vs.

INTERSTATE COMMERCE COMMISSION,
Respondent.

PETITION FOR WRIT OF CERTIORARI.

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INDEX.

PAGE

Proceedings Below 1
Jurisdiction 2
Questions Presented 2
Statutes Involved 3
Statement 4
Specification of Errors to be Urged 5
Reasons for Granting the Writ 6
Conclusion 26

CITATIONS.

Adams v. Backlund, 81 Fed. Supp. 643 12
Adler v. Northern Hotel Co., 175 Fed. 2nd 619 .....11, 20
Bend v. Hoyt, 10 L. Ed. 154 13
Boulevard Transit Lines v. U. S., 77 Fed. Supp. 594 .23, 26
Campbell Sixty Six Express, Inc. v. Frisco Transportation Co., 46 M. C. C. 222 8
City of Owensboro v. Cumberland Telephone Co., 230 U. S. 58 23
Coastal Tank Lines, Inc. v. Charlton Bros. Transportation Co., 48 M. C. C. 289 7
Commonwealth v. Alger, 7 Cush. (Miss.) 53 14
Dearborn v. Inhabitants of Brookline, 97 Mass. 466 ... 14
Ex Parte Public National Bank of N. Y., 278 U. S. 101.11, 12
Frost v. Corporation Commission, 278 U. S. 515 23
Gates v. Salmon, 35 Cal. 576 14
Market Co. v. Hoffman, 101 U. S. 112 .....10, 12, 20

Montclair v. Ramsdell, 107 U. S. 147 13
People v. Burns, 5 Mich. 114 14
Platt v. Union Pacific R. R. Co., 99 U. S. 48 .....13, 15, 20
Securities & Exchange Commission v. C. M. Joiner Leasing Corp., 320 U. S. 344 12
Smith Bros. Revocation of Certificate, 22 M. C. C. 524 .....9, 23, 26
Tidewater Transfer Co., Inc., 47 M. C. C. 496 .....9, 23
United States v. American Trucking Ass'n., 310 U. S. 534 12
United States v. 40 Barrels and 20 Kegs of Coca Cola, 215 Fed. Rep. 535 12
United States v. Pennsylvania Ry., 242 U. S. 208 23
United States v. Rock Island Motor Transit Co., 71 Sup. Ct. 382 .....10, 24
United States v. Seatrain Lines, 329 U. S. 428 ....10, 23, 25
United States v. Texas and Pacific Motor Transport Co., 71 Sup. Ct. 422 24
Washington Co. v. Hoffman, 101 U. S. 112 13
Wisconsin Ry. Commission v. Chicago & N. W. Ry. Co., 87 I. C. C. 195 23

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No. _____

CLIFTON E. WELDON,
Petitioner-Appellant Below,

vs.

INTERSTATE COMMERCE COMMISSION,
Respondent-Appellee Below.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable Judges of the Supreme Court of the United States.

PROCEEDINGS BELOW.

Your petitioner, Clifton E. Weldon, respectfully prays that a writ of certiorari issue to review and reverse the decision and judgment of the United States Court of Appeals for the Sixth Circuit entered in the above entitled cause on April 9, 1951 affirming the decision of the United States District Court for the Western District of Tennessee, Eastern Division, dated May 17, 1950. The petition for rehearing filed by Weldon with the United States Court of Appeals was denied by the United States Court of Appeals on June 2, 1951.

JURISDICTION.

This action was brought and the jurisdiction of this court is invoked under the provisions of Part II of the Interstate Commerce Act, more particularly Section 222(b) thereof. (Title 49, Section 322(b), U. S. Code.)

QUESTIONS PRESENTED.

1. Does the Certificate of Public Convenience and Necessity issued to the Petitioner by the Interstate Commerce Commission on June 16, 1948 in Docket No. MC 41404, Sub. 4, authorizing petitioner to transport "Agricultural Products" from points and places in Alabama, Georgia, Louisiana and Mississippi to Chicago, Illinois and points in Illinois within 200 miles of Chicago authorize petitioner to transport raw shelled peanuts from this origin territory to the destination territory of Chicago and the points within 200 miles of Chicago?

2. Is a raw shelled peanut an agricultural product within the meaning of petitioner's Certificate of Public Convenience and Necessity issued to him by the Interstate Commerce Commission authorizing petitioner to transport "agricultural products"?

3. Did the United States Court of Appeals err in construing the Certificate of Public Convenience and Necessity issued by the Commission to petitioner to have the same meaning as the phrase "agricultural commodities (not including manufactured products thereof)" found in Section 203(b)(6) of the Interstate Commerce Act? (49 U. S. C., § 303(b)(6).)

4. Did the United States Court of Appeals err in failing to find that the construing of the Certificate of Public Convenience and Necessity which authorized petitioner to transport "Agricultural Products" to mean the same as

the words "agricultural commodities (not including the manufactured products thereof)" as used in Section 203(b)(6) of Part 2 of the Interstate Commerce Act constitutes a partial revocation of petitioner's Certificate without complying with the provisions of Section 212(a) of Part 2 of the Interstate Commerce Act? (49 U. S. C., § 312(a).)

STATUTES INVOLVED.

The relevant portions of the statutes applicable to the issues herein presented are as follows:

Section 203(b)(6) of Part 2 of the Interstate Commerce Act (49 U. S. C., § 303(b)(6).)

"Nothing in this part, except the provisions of Section 204 relative to qualifications and maximum hours of service of employees and safety of operations or standards of equipment shall be construed to include * * * (6) motor vehicles used in carrying property consisting of ordinary livestock, fish (including shell fish), *or agricultural commodities (not including manufactured products thereof)*, if such motor vehicles are not used in carrying any other property, or passengers for compensation." (Emphasis supplied.)

Section 212(a) of Part 2 of the Interstate Commerce Act (49 U. S. C., § 312(a)) provides:

"No certificate, permit, or license shall be revoked (except upon application of the holder) unless the holder thereof wilfully fails to comply, within a reasonable time, not less than thirty days, to be fixed by the Commission, with a lawful order of the Commission, made as provided in Section 204(c), commanding obedience to the provisions of this part, or to the rule or regulation of the Commission thereunder, or to the term, condition, or limitation of such certificate, permit or license found by the Commission to have been violated by such holder."

STATEMENT.

This action was brought by the Interstate Commerce Commission, Respondent-Plaintiff to enjoin Clifton E. Weldon, Defendant-Petitioner from engaging in the transportation of raw shelled peanuts by motor vehicle from points in Alabama, Florida, Georgia, Louisiana and Mississippi to Chicago, Illinois and points within 200 miles of Chicago alleging that Weldon did not hold a certificate authorizing the transportation of raw shelled peanuts and that unless enjoined Weldon would continue to transport raw shelled peanuts. Weldon filed an Answer admitting that he was transporting raw shelled peanuts and admitted that he would continue to transport raw shelled peanuts. Weldon further alleged that by virtue of the certificate issued to him by the Commission authorizing the transportation of "Agricultural Products" he was authorized to transport raw shelled peanuts from Alabama, Georgia, Louisiana and Mississippi to Chicago and points within 200 miles of Chicago. Weldon further alleged that a raw shelled peanut was an unmanufactured agricultural product and by virtue of Section 203(b)(6) of the Interstate Commerce Act no certificate from the Interstate Commerce Commission was necessary to transport raw shelled peanuts as no other property or persons were transported for compensation in same vehicle at the same time the raw shelled peanuts were transported. The parties stipulated to all of the facts and the stipulation was filed on January 24, 1950 and is contained on pages 13, 14, 15, 16 and 17 of the "Transcript of Designation of Record on Appeal". The matter was orally argued before the District Court and on May 17, 1950 the Memorandum Opinion of the District Court was filed and on June 2, 1950 "Findings of Fact and Conclusions of Law" were filed. In his Memorandum

Opinion Judge Marion S. Boyd held that a raw shelled peanut was a manufactured agricultural commodity and that the certificate of Weldon should be construed in the same manner as the phrase "Agricultural Commodities (not including manufactured products thereof)" found in Section 203(b)(6) of the Interstate Commerce Act. The Court further found that the generic term "Agricultural Products" used in Weldon's certificate and the term "Agricultural Commodities" appearing in Section 203(b)(6) do not permit the interstate transportation of raw shelled peanuts as raw shelled peanuts are a manufactured product. On June 12, 1950 an order was entered extending the time for filing a motion for new trial and on June 19, 1950 the motion for a new trial was filed. On July 7th, the motion for new trial was overruled. On appeal Weldon urged that the District Court erred in its findings and on April 9, 1951 the United States Court of Appeals affirmed the decision of the District Court for the reasons set forth in the decision of Judge Marion Boyd. On April 27, 1951 the petitioner filed a petition for rehearing and on June 2, 1951 the Court of Appeals denied the Petition. On June 18, 1951 the Court of Appeals entered an order staying mandate for 30 days and further provided that if a Petition for Certiorari was filed within 30 days the stay would continue until final disposition of the case in the Supreme Court.

SPECIFICATIONS OF ERRORS TO BE URGED.

The United States Court of Appeals for the Sixth Circuit erred:

1. That the Court erred in failing to find that the Certificate of Public Convenience and Necessity issued to the petitioner-defendant by the Interstate Commerce Commission authorizing the transportation of "Agricultural Prod-

Again on page 301 of the same case the Commission said:

> *"The term 'general commodities' in certificates of Public Convenience and Necessity means all types of commodities except to the extent restricted.* Here there is no ambiguity in the terms of defendant's certificate and only the terms of the certificate may be looked to in determining its operating rights." (Emphasis supplied.)

The words "agricultural products" used in Weldon's certificate can be compared to the term "general commodities" as used in Charlton Bros. certificate In the *Charlton* case the Commission held that the term "general commodities" means general commodities except to the extent restricted. We earnestly submit that the term "Agricultural Products" as used in Weldon's certificate means "Agricultural Products" except to the extent restricted. Weldon's certificate contained no restrictions so we submit that he should be permitted to transport all kinds and types of "Agricultural Products."

In *Campbell Sixty Six Express, Inc.* v. *Frisco Transportation Co.*, 46 M. C. C. 222, the Interstate Commerce Commission stated:

> "The Certificate of Public Convenience and Necessity which we issue should state clearly and unequivocally the service which may be performed by the carrier to which they are issued. Section 208 (a) of the Interstate Commerce Act requires that any certificate shall specify among other things, the service to be rendered, and motor carriers and others interested are not required to go back of the certificate to determine the nature and extent of the service authorized. *Here we may look only to the certificates held by the transportation company to determine whether it is engaged in unauthorized operations."* (Emphasis supplied.)

Here again we find the Commission stating without equivocation that the carriers' operating authority must be deter-

mined from the certificate itself. Congress in passing the Interstate Commerce Act placed the burden on the Commission in Section 208 (a) of stating plainly and unequivocally the service to be rendered by the carrier and it must be presumed that the Commission met this burden when they issued this certificate to this defendant-appellant. Certainly there is no need to interpret or construe this authority.

We further desire to direct the Court's attention to the decision of the Interstate Commerce Commission in the *Tidewater Transfer Co., Inc.*, case 47 M. C. C. 496. In this case the Tidewater Transfer Co. was granted a permit by the Interstate Commerce Commission to transport "wine". The rail carriers contended that this authority did not permit Tidewater to transport wine in bulk and in tank vehicles. The Commission answered this contention by saying:

> "Here it will be noted that Tidewater's permit already is issued and outstanding authorizing the transportation of wines without limitation or restriction. *To now hold that Tidewater's unrestricted permit does not include the right to transport wines in tank vehicles would be reading into the permit a condition or limitation which does not exist and which would have the effect of a partial revocation of Tidewater's permit without the benefit to it of the procedure provided in Section 212 (a) of the Interstate Commerce Act. We are without authority to take such action. Smith Bros. Revocation of Certificate,* 22 M. C. C. 524. It may be that when the permit was issued, tank vehicle service specifically should have been eliminated, but it was not, *and we may not now, by interpretation, change an unrestricted authority.*" (Emphasis supplied.)

The Commission has attempted to distinguish between the present case and the *Tidewater* case contending that this decision related merely to the method of transporting a commodity which Tidewater was already authorized to

transport (see Page 6 of Appellee's Reply to Appellant's Petition for Rehearing). No party to this proceeding has ever contended that petitioner-defendant did not have authority to transport raw peanuts in the shell, yet the Commission by this proceeding is attempting to stop Weldon from transporting raw peanuts without the shell. To use the argument of the Commission the method of transporting of peanuts in a shell would be legal but to transport a peanut without a shell is illegal. We have on numerous occasions seen the Commission split hairs with the proficiency gained through some sixty years of regulation, but this is the first occasion we have seen this type of fission.

As we previously stated the Commission attempted to distinguish the present case from the *Tidewater* case by contending that in that case the issue was the form of transportation to be used. Even this contention is unsound because it was held by the Supreme Court in *United States* v. *Seatrain Lines,* 329 U. S. 428 that this would be a partial revocation. The Supreme Court in discussing *Seatrain Lines* case in *U. S.* v. *Rock Island Motor Transit Co.,* 71 Sup. Ct. 382 stated:

> "Seatrain was granted a certificate to carry 'commodities generally'. For the Commission then to modify this to 'in railroad cars only' or 'except in railroad cars' would limit the freight authorized to be carried by the certificate". This would, of course, constitute a partial revocation of the certificate without complying with Section 212 (a) of Part 2 of the Interstate Commerce Act.

Up to this point we have confined our arguments to construction accorded by the Commission to their own orders. Feeling that it might be helpful to the Court we will cite a few of the leading cases on statutory construction. In *Market Co.* v. *Hoffman,* 101 U. S. 112 (1878) at page 115

the Supreme Court laid down the rule regarding the construction of statutes as follows:

> "• • • We are not at liberty to construe any statute so as to deny effect to any part of its language. *It is a cardinal rule of statutory construction that significance and effect shall, if possible, be accorded to every word.* As early as Bacon's Abridgment, Sec. 2, it was said that 'a statute ought upon the whole, to be so construed that, if it can be permitted, no clause, sentence or word shall be superfluous, void or insignificant.' "

This rule was expressly stated with approval in *Ex Parte Public National Bank of New York,* 278 U. S. 101 (1928). The rules of these cases were applied in the very recent case of *Adler* v. *Northern Hotel Co.,* 175 Fed. 2nd 619 (C. C. A. 7, 1949). In this last mentioned case the plaintiff sued for triple damages under the rent control act. The suit was brought in the District Court and defendant appealed on the grounds that the claim of plaintiff was less than $3,000. The suit involved the interpretation of Section 205 of the Housing and Rent Act of 1947. The part of the statute in issue provided that suit could be brought to recover three times the overcharges or $50 whichever was the greater, and then stated:

> "Suit to recover *such amount* may be brought in any Federal, State or Territorial Court of competent jurisdiction within one year from the date of such violation."

In holding for the plaintiff the Court stated at page 621:

> "In construing the language of Section 205, we commence with the rule *that the courts are not at liberty to construe any statute so as to deny effect to any part of the language.* 'It is a cardinal rule of statutory construction that significance and effect shall, if possible, be accorded to every word. • • • Another rule equally recognized is that every part of a stat-

ute must be construed in connection with the whole, so as to make all the parts harmonize, if possible, and give meaning to each.' *Market Co.* v. *Hoffman,* 101 U. S. 112, 115, 116, 25 L. Ed. 782, and *Ex Parte Nat. Bank,* 278 U. S. 101, 104, 49 S. Ct. 43, 73 L. Ed. 202. THAT IS TO SAY, EVERY WORD USED IS PRESUMED TO HAVE MEANING AND PURPOSE FOR CONGRESS IS NOT THOUGHT BY THE COURTS TO HAVE USED LANGUAGE IDLY.

"As already noted Section 205 provides that suit to recover such amount ($50 or three times the amount of the overcharge) may be brought in any federal court of competent jurisdiction. The terms 'such amount,' 'federal,' and 'competent jurisdiction,' we have been told, cannot be removed from the context but must be read as part of the entire section and construed so as to give effect to the intent of Congress, Cf. *United States* v. *American Trucking Associations,* 310 U. S. 534, 542, 60 S. Ct. 1059, 84 L. Ed. 1345, and that in deciphering that intent we must construe the details of an Act in conformity with its domination of general purpose so as to carry out the expressed legislative policy. *Securities and Exchange Commission* v. *C. M. Joiner Leasing Corp.,* 320 U. S. 344, 350, 64 S. Ct. 120, 88 L. Ed. 88.

"When the purposes of Congress are considered and the well known principles of the rules already mentioned are applied there can be no doubt that the Housing and Rent Act, *supra,* does contain a grant of general jurisdiction to the federal courts. See *Adams* v. *Backlund,* D. C. 81 F. Supp. 643. To hold otherwise, we would have to ignore Section 205, *especially the phrase such amount.* THIS WE MAY NOT DO. *Market Co.* v. *Hoffman, supra,* and *Ex Parte Public National Bank, supra.*"

The Circuit Court of Appeals for the Sixth Circuit has also followed the *Hoffman* case. In *United States* v. *40 Barrels and 20 Kegs of Coca Cola,* 215 Fed. Rep. 535 (1914) the Court stated at page 540:

"It is urged that in case of a compound article each element is in a proper sense 'added' and so, if any element is deleterious, it is an 'added deleterious ingredient.' This position not only depends in part upon what we have thought an erroneous view of the general purpose of the statute, but it destroys all force in the word 'added' and gives clause 5 of that part of section 7 relating to food precisely the same meaning as if it read 'if it contain any poisonous or other deleterious ingredient,' etc. *The deliberate and careful insertion of the word 'poisonous' and again before the word 'deleterious'* WHILE THE WORD IS OMITTED IN THE PRECEDING ALMOST IDENTICAL CLAUSE RELATING TO CONFECTIONERY, *cannot be treated as accidental or meaningless.* So to do would violate the settled rule of construction which requires us to 'give full effect to all the words in their ordinary sense' (*Bend* v. *Hoyt,* 13 Pet. 263, 10 L. Ed. 154), and requires that 'signification and effect shall, if possible, be carried to every word.' (*Washington Co.* v. *Hoffman,* 101 U. S. 112 (25 L. Ed. 782)), and declares it the 'duty of the court to give effect, if possible to every clause and word of a statute, avoiding, if it may be, any construction which implies that the Legislature was ignorant of the meaning of the language it employed.' (*Montclair* v. *Ramsdell,* 107 U. S. 147, 152, 2 Sup. St. 391, 395 (27 L. Ed. 431).)"

In *Platt* v. *Union Pacific R. R. Co.,* 99 U. S. 48 (1878), the question was whether the plaintiff was entitled to be considered a pre-emptioner. The statute under consideration was one granting to the railroad certain lands on each side of a railroad to be built. The statute provided that any lands "not sold or disposed of" within three years after the completion of the road were entitled to preemption by settlers. The company mortgaged the lands in controversy and the issue to be decided was whether the mortgage was a "disposition" within the Statute. In hold-

will show conclusively that Congress dealt with the term "Agricultural Products" and that the term without any modifying language was considered by Congress to embrace BOTH manufactured and unmanufactured agricultural products. However, an exemption was to be granted to only one type of "agricultural products"—the UNMANUFACTURED type. Because to Congress the expression "Agricultural Products" embraced BOTH types it was necessary for Congress to restrict the term "Agricultural Products". It did this by the parenthetical clause "(not including manufactured products thereof)". To contend that the term "Agricultural Products" CARRIES THE SAME MEANING as "Agricultural Commodities (not including manufactured products thereof)", is to violate, as will hereafter be shown, every one of the above rules of statutory construction.

As originally passed by the Senate, Senate Bill S-1629 contained no provision relating to the transportation of agricultural products. In reporting the bill to the House of Representatives, however, the House Committee on Interstate and Foreign Commerce inserted the following exemption:

> "Sec. 203(b)(8) motor vehicles used exclusively in carrying livestock or UNPROCESSED AGRICULTURAL PRODUCTS."

The discussion in the Committee (Cong. Rec., 74th Cong., 1st Sess., Vol. 79, Part II, page 12205) is set forth as follows:

> "Mr. Anderson: What is the definition of the committee with reference to 'other UNPROCESSED farm COMMODITIES? What does it include?
>
> "Mr. Sadowski: Any thing that has not been CANNED, OR MANUFACTURED, OR PROCESSED.
>
> "Mr. Anderson: Would it take in cream and milk?
>
> "Mr. Sadowski: Everything that is NOT PROCESSED. Cream and milk would come under that.

"Mr. Anderson: Does the committee have any definite opinion on that?

"Mr. Sadowski: NO. We do not give any definition of the word 'UNPROCESSED'. I think it is very well understood that milk is certainly an UNPROCESSED AGRICULTURAL PRODUCT.

"Mr. Anderson: Does the gentleman consider cream unprocessed?

"Mr. Rayburn: I do.

"Mr. Anderson: Both milk and cream, in the gentlemen's opinion would be unprocessed?

"Mr. Rayburn: Yes.

"* * * Mr. Barden: I would like to ask if the gentlemen's committee had any opinion from the legal department with reference to the definition as to what is covered in the term 'UNPROCESSED AGRICULTURAL PRODUCTS'?

"Mr. Sadowski: I cannot say but that has been used previously in legislation. I imagine the courts may be called upon at some time to interpret that, but it is not for us to go into a lengthy discussion trying to define ALL AGRICULTURAL PRODUCTS which are UNPROCESSED. They would run into the thousands.

"Mr. Barden: Is it not very vital, at this point, especially to truck areas. Is it not very important that we do have that established?

"* * * Mr. Sadowski: Well I do not know. I thing the courts have gone into that.

"Mr. Dingell: Will the gentlemen yield?

"Mr. Sadowski: I yield.

"Mr. Dingell: I think it is quite evident that CANNED milk is PROCESSED milk. RAW milk in cans, going to market, or separated cream, is NOT PROCESSED. By that same method you will determine that beef in CANS is PROCESSED and beef on the HOOF is NOT PROCESSED. I think that the question is PLAIN BEYOND DOUBT that there is a DEFINITE DISTINCTION between PROCESSED corn in CANS and corn going to market on the ear.

"* * * Mr. Anderson: It is clear then, that it

includes ALL FARM COMMODITIES produced upon any farm in the RAW STATE ready for market.

"Mr. Sadowski: On the whole THAT IS THE WAY THE COMMISSION WILL INTERPRET IT. UNDOUBTEDLY THE COURTS WILL GIVE THE SAME INTERPRETATION TO IT. I do not think we need discuss this further."

It is obvious that the prolonged discussion in the Committee could have arisen as the result of one thing—to Congress the term "Agricultural Products" embraced BOTH processed and unprocessed agricultural products. Had Congress considered the term "agricultural products" synonymous with "unprocessed agricultural products" the discussion and defining relating to CANNED milk, beef in CANS, corn in CANS was meaningless. Congress would not have considered these items agricultural products and they would have been outside the scope of the discussion. But Congress had no such conception of the term "agricultural products". To Congress the term comprised both PROCESSED and UNPROCESSED, but the exemption to be accorded was to only one of these—UNPROCESSED. The discussion in the Committee was to determine what items of "agricultural products" fell within the exemption. Such a determination would have been unnecessary if Congress' conception of "agricultural products" was synonymous with "unprocessed agricultural products".

The following excerpts from the Committee discussion show conclusively that the term "agricultural products" was considered by the Committee as embracing BOTH processed and unprocessed agricultural products:

"Mr. Sadowski: * * * I think it is very well understood that milk is certainly an UNPROCESSED agricultural product."

If "agricultural products" is synonymous with "unprocessed agricultural products" then it would only have

been necessary to state that milk is an "agricultural product". The word "UNPROCESSED" would have added nothing.

> "Mr. Sadowski: • • • It is not for us at this time to go into a lengthy discussion trying to define ALL AGRICULTURAL PRODUCTS which are UNPROCESSED." • • •

Again there is a refutation that the Committee considered "agricultural products" as synonymous with "unprocessed agricultural products". Had it so considered, the phrase "which are unprocessed", would have been superfluous.

> "Mr. Dingell: I think it is quite evident that CANNED milk is PROCESSED milk. RAW milk in cans, going to market, or separated cream, is NOT PROCESSED."

In other words CANNED milk is a PROCESSED agricultural product, while RAW milk is an UNPROCESSED agricultural product. But they are BOTH "agricultural products". And the Committee's conception of the term "agricultural products" was that it embraced both processed and unprocessed. If the Committee's conception that the term "agricultural products" is synonymous with the term "unprocessed agricultural products" then Mr. Dingell could not have made the statement that "CANNED milk is PROCESSED milk."

Thus with the definite substantiation of the Committee as to its interpretation of the word "agricultural products", the rules of statutory construction set forth above may be applied.

As previously shown the amendment to Senate Bill S 1629 read:

> "UNPROCESSED AGRICULTURAL PRODUCTS."

The contention is made that the term "Agricultural Products" CARRIES THE SAME MEANING as "unprocessed

agricultural products". If such is so then the word "UNPROCESSED" is a WORD which carries no meaning and violates the cardinal rule of stautory construction that significance and effect shall, if possible, be accorded to EVERY word. (*Market Co.* v. *Hoffman, supra.*) The word "UNPROCESSED" becomes superfluous and redundant. But Congress is not to be presumed to have used words for no purpose. Where a construction would make a word redundant it is reason for rejecting it. (*Platt* v. *Union Pacific R. R. Co., supra.*) Every word used is presumed to have meaning and purpose for Congress is not thought by the Courts to have used language idly. To accept the construction that the term "agricultural products" is the equivalent of "unprocessed agricultural products" is to ignore the word "UNPROCESSED". But this may not be done. (*Adler* v. *Northern Hotel Co., supra.*)

Thus under the rules of statutory construction the contention that "UNPROCESSED agricultural products" is the same as "agricultural products" must be rejected.

"Agricultural products" is not the same as "unprocessed agricultural products". The term "agricultural products" is wider in scope. It embraces BOTH processed and unprocessed agricultural products. By the use of the modifying word "UNPROCESSED" Congress restricted the term "agricultural products" and as so modified it was limited to only one type of agricultural products—namely agricultural products which are "unprocessed". It is only by such construction that the rules of statutory construction are complied with. By this construction significance and effect is accorded to every word. No word is superfluous or redundant. Every word is used for some purpose.

The above amendment to S 1629 was changed that day to its present language (Sec. 203 (b) (6). The Committee

in discussing this change stated (Cong. Rec., 74th Cong. 1st sess. Vol. 79, Part II, page 12220):

> "Mr. Pettengill: Mr. Chairman we have heard a good deal of discussion this afternoon as to what is a PROCESSED AGRICULTURAL PRODUCT, whether that would include pasteurized milk or ginned cotton. It was not the intent of the committee that it SHOULD INCLUDE THESE PRODUCTS. Therefore, to meet the view of many members, we thought we would strike out the words "unprocessed" and make it apply only to manufactured products.
>
> "* * * Mr. Whittington: In other words, under the amendment to the committee amendment, cotton in bales and cottons transported from the ginneries to the market or to a public warehouse would be exempt, whereas they might not be exempt if the language remained, because ginning is sometimes synonymous with processing."

Thus the change made by the above amendment was to prevent a minor interpretation and did not affect the Committee's views as expressed with regard to the statute as first reported to the Committee. The language of the present section "Agricultural Commodities (not including manufactured products thereof)" is not synonymous with "Agricultural Products". It is open to the same objections on the same grounds made to the language contained in the first amendment.

We respectfully submit that the above cases conclusively show that the Interstate Commerce Commission is not to be presumed to have used words for no purpose. If the Commission had intended to authorize Weldon to transport only "unmanufactured agricultural products" they would have so worded the certificate. Or if they had intended Weldon to transport only unmanufactured agricultural products they would have used the very language used by Congress in Section 203 (b) (6) namely "*agricultural com-*

modities not including the manufactured product thereof." Their failure to use such language can only mean that they did not intend to so restrict Weldon's certificate.

The Interstate Commerce Commission has argued that if the Commission had intended to authorize Weldon to transport manufactured agricultural products that the certificate would have been worded "manufactured agricultural products". This, of course, would have then restricted Weldon to transporting manufactured agricultural products and he could not transport unmanufactured agricultural products. This, of course, was obviously not the intention of the Commission. Following the reasoning of the Commission, if it intended to authorize the transportation of both manufactured and unmanufactured agricultural products it would have issued Weldon a certificate authorizing this transportation by using the phrase "manufactured and unmanufactured Agricultural Products", or some similar wording. It is quite obvious that this language is surplusage and that the Commission could and would accomplish this intention by using the unrestricted phrase "Agricultural Products". This is precisely what the Commission intended to do when it issued to Weldon a certificate authorizing the transportation of "Agricultural Products".

The action of the Interstate Commerce Commission and the Court in construing the Certificate authorizing the transportation of "Agricultural Products" to mean the same as the words "Agricultural Commodities (not including the manufactured products thereof)" as used in Section 203 (b) (6) of Part 2 of the Interstate Commerce Act constitutes a partial revocation of petitioner-defendant's certificate without complying with the provisions of Section 212 (a) of Part 2 of the Interstate Commerce Act.

Section 212 (a) of Part 2 of the Interstate Commerce

Act provides the only way in which a certificate, permit or license may be revoked in whole or in part. The Interstate Commerce Commission, being an agency of limited powers and authority, may not exceed its statutory powers. *U. S.* v. *Pennsylvania Ry.*, 242 U. S. 208; *Wisconsin Ry. Commission* v. *Chicago & N. W. Ry. Co.*, 871 C. C. 195. Certificates of Public Convenience and Necessity and the rights which they grant are valuable property rights. *City of Owensboro* v. *Cumberland Telephone Co.*, 230 U. S. 58; *Seatrain Lines* v. *U. S.*, 64 Fed. Supp. 156, 329 U. S. 424. Therefore being property of value, they are entitled to constitutional protection, *Frost* v. *Corporation Commission*, 278 U. S. 515.

For the Commission or the Courts to revoke or partially revoke a certificate without complying with the provisions of Section 212 (a) of Part 2 of the Interstate Commerce Act would constitute the taking of property without due process of law in violation of the Fifth Amendment to the United States Constitution. If the Commission had attempted to revoke the Certificate of Public Convenience and Necessity issued to petitioner-defendant and issued in lieu thereof a certificate authorizing Weldon to transport Agricultural Commodities (not including the manufactured products thereof) we do not believe anyone would not agree that this would not be in violation of the Fifth Amendment. *United States* v. *Seatrain*, 329 U. S. 424, *Boulevard Transit Lines* v. *U. S.*, 77 Fed. Supp. 594, 595, *Smith Bros. Revocation of Order*, 33 M. C. C. 465. The Commission seeks to attain this objective through administrative and judicial interpretation in spite of the fact that they have previously held directly to the contrary in the case of *Tidewater Transfer Co.*, 47 M. C. C. 496 when they stated as follows:

"Here it will be noted that Tidewater's permit already is issued and outstanding authorizing the trans-

portation of wines without restriction or limitation. To now hold that Tidewater's unrestricted permit does not include the right to transport wines in tank vehicles would be reading into the permit a condition or limitation which does not exist and which would have the effect of a partial revocation of Tidewater's permit without the benefit to it of the procedure provided in Section 212 (a) of the Interstate Commerce Act. We are without authority to take such action. *Smith Bros. Revocation of Certificate,* 22 M. C. C. 524. It may be that when the permit was originally issued, tank vehicle service specifically should have been eliminated, but it was not, *and we may not now by interpretation, change an unrestricted authority.*" (Emphasis supplied.)

At this point we would like to direct the Court's attention to the recent decisions of the Supreme Court decided February 26, 1951 involving injunction proceeding by *Rock Island Motor Transit Co.* v. *U. S. and the Interstate Commerce Commission,* 71 Sup. Ct. 382 and *Texas and Pacific Motor Transport Co.* v. *U. S. and Interstate Commerce Commission,* 71 Sup. Ct. 422 also decided February 26, 1951. In these cases the Commission had issued a Certificate of Convenience and Necessity to these wholly owned subsidiaries of the railroads which contained reservations permitting the Commission to make further restrictions in order to insure the motor carrier operations would be supplemental to those conducted by the railroads. These railroad subsidiaries contended that the imposition of further restrictions constituted a violation of the Interstate Commerce Act as they failed to comply with Section 212 (a) of the Act. In a five to four decision the Supreme Court reversed the three judge Court which had enjoined the Commission. In this decision the Court stated:

"Reservation of Interstate Commerce Commission

in Certificate of Convenience and Necessity granted to railroad affiliated motor carrier of right to make future restrictions to insure that motor service remain auxiliary or supplemental to rail service does not provide unfettered power in Interstate Commerce Commission to change certificate at will, since that would violate provision of Motor Carrier Act permitting revocation of certificate only for willful failure to comply with Act or regulations."

The Court further stated:

"A reservation contained in Certificate of Convenience and Necessity issued to railroad affiliated motor carrier permitting further restrictions to make service auxiliary or supplemental to train service would not authorize a change unconnected with the plan of coordinated operations but only changes to insure that operations would continue as auxiliary or supplemental to train service."

In the *Rock Island* case the Supreme Court in discussing *United States* v. *Seatrain Lines*, 329 U. S. 428, 67 S. Ct. 435 stated:

"In Seatrain a certificate was granted to carry 'commodities generally'. For the Commission then to modify this to 'in railroad cars only' or 'except in railroad cars' would limit the freight authorized to be carried by the certificate."

In the *Rock Island Motor Transit Co.* case the Supreme Court stated:

"We hold the new conditions are within the limits covered by the reservation of power to impose such further limitations as might be found necessary 'to insure that the service shall be auxiliary or supplementary to train service of the C. R. I. and Pacific Ry. Co.' "

In the *Rock Island* case the Supreme Court in discussing

the decisions of *Boulevard Transit Lines* v. *United States*, 77 F. Supp. 594, 595 and *Smith Bros. Revocation of Order*, 33 M. C. C. 465, 472 stated:

> "Neither of these cases bear in any way on the present point. In both, certificates had been issued and the Commission said in so many words, the certificates are final."

In discussing the *Smith Bros. Revocation* case the Supreme Court quoted the following excerpt:

> "We may issue decision upon decision and order upon order, on an application for a certificate so long as sufficient reason therefor appears and until all controversy is determined, but once a certificate, duly and regularly issued, becomes effective, our authority to terminate it is expressly marked off and limited. All the antecedent decisions and orders are essentially procedural in character, and may be set aside, modified or vacated but the certificate marks the end of the proceeding just as the entry of a final judgment or decree marks the end of a court proceeding (P. 472)."

CONCLUSION.

Wherefore your petitioner prays that a writ of certiorari issue under the Seal of this Court, directed to the United States Court of Appeals for the Sixth Circuit commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of the said United States Court of Appeals had in the case numbered and entitled on its Docket No. 11,247, Interstate Commerce Commission, Plaintiff-Respondent *vs.* Clifton E. Weldon, Defendant-Petitioner all to the end that this cause may be reviewed and determined by the Court as provided for by the Statutes of the United States; and that the judgment herein of said United States Court

of Appeals for the Sixth Circuit be reversed by the Court and for such further relief as to this Court may seem proper.

Dated: July 14, 1951.

CLIFTON E. WELDON,
Petitioner,
By JOSEPH M. SCANLAN,
Counsel for Petitioner.

In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 191

CLIFTON E. WELDON, PETITIONER

v.

INTERSTATE COMMERCE COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the district court (R. 19) is reported at 90 F. Supp. 873. No opinion was rendered by the court of appeals. The judgment of that court (R. 41) is reported at 188 F. 2d 367.

JURISDICTION

The judgment of the court of appeals was entered on April 9, 1951 (R. 41), and a petition for rehearing was denied on June 2, 1951 (R. 60). The

petition for a writ of certiorari was filed on July 17, 1951. The jurisdiction of this Court is invoked under 28 U.S.C. 1254.

QUESTION PRESENTED

Whether shelled raw peanuts may be transported under a motor carrier's certificate of convenience and necessity authorizing transportation of "agricultural products."

STATUTE INVOLVED

Pertinent provisions of Part II of the Interstate Commerce Act, 49 U.S.C. 301 *et seq.* are set forth in the Appendix, *infra,* pp. 8-11.

STATEMENT

The Interstate Commerce Commission brought this action in the United States District Court for the Western District of Tennessee to enjoin petitioner, a common carrier by motor vehicle, from transporting shelled raw peanuts in interstate commerce without having obtained a proper certificate of convenience and necessity therefor (R. 2-5). Petitioner's answer, admitting the transportation, contended (1) that the transportation was authorized by a certificate held by him covering the transportation of "agricultural products," and (2) that no certificate was needed because of Section 203(b)(6) of the Interstate Commerce Act, which exempts from the certificate requirement "motor vehicles used in carrying property consisting of * * * agricultural commodities (not

including manufactured products thereof) * * * " (R. 10-12).

The district court rejected these contentions and granted the Commission's motion for summary judgment (R. 31). It found that raw shelled peanuts are a manufactured product and therefore are not exempt under Section 203(b)(6), *supra*. And it construed the term "agricultural products" in petitioner's certificate as equivalent to the term "agricultural commodities (not including manufactured products thereof)" in the Act. Hence, it concluded that carriage of shelled peanuts was also beyond the authority of petitioner's certificate. (R. 30.) In reaching this conclusion the district court referred to the extensive processing undergone by the peanuts during shelling (R. 20-21), and cited the decision of the Commission in *Monark Egg Corporation Contract Carrier Application*, 44 M.C.C. 15, that shelled peanuts were a manufactured commodity (R. 24-25).

The court of appeals affirmed without opinion "upon the grounds and for the reasons set forth in the memorandum opinion of the district court * * *" (R. 41).[1]

ARGUMENT

1. The petition raises only the narrow question whether petitioner's certificate of convenience and

[1] Briefs *amicus curiae* supporting petitioner's claim of exemption were filed by the Secretary of Agriculture in the court of appeals. The Secretary contended that shelled raw peanuts were not manufactured commodities under the exemption provision of Section 203(b)(6).

necessity authorizes the transportation of shelled raw peanuts. Both the "Questions Presented" and the "Specifications of Errors to be Urged" are framed solely in terms of the scope of the authority granted by the certificate (Pet. 2, 5).

No question of statutory interpretation is involved, since petitioner has abandoned his contention, made in the district court, that the transportation comes within the statutory exemption. Petitioner's argument that the district court improperly construed the phrase "agricultural products" in his certificate to mean "agricultural commodities (not including manufactured products thereof)" as used in Section 203(b)(6) presents no question as to the proper construction of that Section. It merely raises the issue whether the language in the certificate was intended by the Commission to have the same meaning as the different language used by Congress in the statute.[2] Obviously, the interpretation of a single certificate of convenience and necessity does not present a question of sufficient general importance to justify review by this Court.

2. Petitioner seeks review of an interpretation by the Commission of its own certificate, which interpretation has been sustained by the two courts

[2] The legislative history cited in support of petitioner's contention—purportedly demonstrating that the words "agricultural commodities (not including manufactured products thereof)" were used by Congress in a narrower sense than the phrase "agricultural products" which appeared in an earlier draft of the bill—is irrelevant to the meaning of "agricultural products" as used in petitioner's certificate.

below. We submit that the term "agricultural products" in the certificate plainly connotes products of the farm. Petitioner would have the Court hold, in effect, that "products of the farm" includes "commodities manufactured from products of the farm." There is no basis for such an expansion of the term, and the courts below correctly held that by this language the Commission clearly meant to authorize no more than the transportation of unmanufactured products of the farm. Since the Commission consistently has held that shelled peanuts are a manufactured product, *Monark Egg Corporation Contract Carrier Application,* 44 M.C.C. 15; *Determination of Exempted Agricultural Commodities,* 52 M.C.C. 511, 537 (April 13, 1951), transportation of this product was not authorized by petitioner's certificate.[3]

3. Petitioner's contention that the action of the lower courts in construing his certificate to mean "agricultural commodities (not including manufactured products thereof)" constitutes a partial revocation of his certificate without complying with the applicable provisions of Section 212(a) of the Interstate Commerce Act appears frivolous. The

[3] The decisions of the Commission cited by petitioner are not in conflict. *Tidewater Transfer Co., Inc.—Extension—Wines in Bulk,* 47 M.C.C. 496, dealt with the method of transporting a commodity whose transportation already was authorized; the Commission held that a certificate covering wine sanctioned the transportation of wine in tank vehicles. *Coastal Tank Lines, Inc.* v. *Charlton Bros. Transportation Co.,* 48 M.C.C. 289, concerned a certificate to transport "general commodities," obviously a far different type of authority from the restricted "agricultural products" here involved.

court, in construing the certificate, is not depriving petitioner of any rights, but merely is determining what those rights are.[4] The cases cited by petitioner in support of this contention are not apposite since they involve the power of the Commission to modify an existing certificate in administrative proceedings rather than the power of courts to construe one.[5]

---

[4] The same contention of partial revocation of a motor carrier certificate by judicial construction was unsuccessfully urged upon this Court in *Black* v. *Interstate Commerce Commission*, 167 F. 2d 825 (C.A. 5), certiorari denied, 335 U.S. 818 (see No. 120, Oct. Term 1948, Br. in support of pet. for certiorari, 18-19).

[5] Moreover, in two of these cases, *United States* v. *Rock Island Motor Transit Co.*, 340 U.S. 419, and *United States* v. *Texas & Pacific Motor Transport Co.*, 340 U.S. 450, the action of the Commission which allegedly modified the certificate was sustained, while *United States* v. *Seatrain Lines*, 329 U.S. 424, merely held that the Commission's power to revoke a certificate did not extend to carriers by water.

CONCLUSION

As the decision below is correct, is not of general significance and there is no conflict of decisions, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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Solicitor General.
H. G. MORISON,
Assistant Attorney General.
DANIEL M. FRIEDMAN,
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SEPTEMBER 1951.

INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	2
Argument	3
Conclusion	7
Appendix	8

CITATIONS

Cases:

Black v. *Interstate Commerce Commission*, 167 F. 2d 825, certiorari denied, 335 U. S. 818	6
Coastal Tank Lines, Inc. v. *Charlton Bros. Transportation Co.*, 48 M.C.C. 289	5
Determination of Exempted Agricultural Commodities, 52 M.C.C. 511	5
Monark Egg Corporation Contract Carrier Application, 44 M.C.C. 15	3, 5
Tidewater Transfer Co., Inc.—Extension—*Wines in Bulk*, 47 M.C.C. 496	5
United States v. *Rock Island Motor Transit Co.*, 340 U. S. 419	6
United States v. *Seatrain Lines*, 329 U. S. 424	6
United States v. *Texas & Pacific Motor Transport Co.*, 340 U. S. 450	6

Statutes:

Interstate Commerce Act:

Section 203(b)(6) (49 U.S.C. 303(b)(6))	2, 3, 4, 8
Section 206(a)(1) (49 U.S.C. 306(a))	8
Section 208(a) (49 U.S.C. 308(a))	9
Section 212(a) (49 U.S.C. 312(a))	5, 9
Section 222(b) (49 U.S.C. 322(b))	10

APPENDIX

The pertinent provisions of Part II of the Interstate Commerce Act, 49 Stat. 543, as amended, 49 U.S.C. 301 *et seq.*, are as follows:

> Sec. 203(b). Nothing in this part, except the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment shall be construed to include * * * (6) motor vehicles used in carrying property consisting of * * * agricultural commodities (not including manufactured products thereof) * * *. [49 U.S.C. 303(b).]
>
> * * * * *
>
> Sec. 206(a)(1). Except as otherwise provided in this section and in section 210a, no common carrier by motor vehicle subject to the provisions of this part shall engage in any interstate or foreign operation on any public highway, or within any reservation under the exclusive jurisdiction of the United States, unless there is in force with respect to such carrier a certificate of public convenience and necessity issued by the Commission authorizing such operations: * * *. [49 U.S.C. 306(a)(1).]
>
> * * * * *

Sec. 208(a). Any certificate issued under section 206 or 207 shall specify the service to be rendered and the routes over which, the fixed termini, if any, between which, and the intermediate and off-route points, if any, at which, and in case of operations not over specified routes or between fixed termini, the territory within which, the motor carrier is authorized to operate * * *. [49 U.S.C. 308(a).]

* * * * *

Sec. 212(a). Certificates, permits, and licenses shall be effective from the date specified therein, and shall remain in effect until suspended or terminated as herein provided. Any such certificate, permit, or license may, upon application of the holder thereof, in the discretion of the Commission, be amended or revoked, in whole or in part, or may upon complaint, or on the Commission's own initiative, after notice and hearing, be suspended, changed, or revoked, in whole or in part, for willful failure to comply with any provision of this part, or with any lawful order, rule, or regulation of the Commission promulgated thereunder, or with any term, condition, or limitation of such certificate, permit, or license: *Provided, however,* That no such certificate, permit, or license shall be revoked (except upon application of the holder) unless the holder thereof willfully fails to comply, within a reasonable time, not less than thirty days, to be fixed by the Commission, with a lawful order of the Commission, made as provided in section 204(c), commanding

obedience to the provision of this part, or to the rule or regulation of the Commission thereunder, or to the term, condition, or limitation of such certificate, permit, or license, found by the Commission to have been violated by such holder: *And provided further,* That the right to engage in transportation in interstate or foreign commerce by virtue of any certificate, permit, license, or any application filed pursuant to the provisions of sections 206, 209, or 211 of this title, or by virtue of the second proviso of section 206(a) or temporary authority under section 210a, may be suspended by the Commission, upon reasonable notice of not less than fifteen days to the carrier or broker, but without hearing or other proceedings, for failure to comply, and until compliance, with the provisions of sections 211(c), 217(a), or 218(a) or with any lawful order, rule, or regulation of the Commission promulgated thereunder. [49 U.S.C. 312(a).]

* * * * *

Sec. 222(b). If any motor carrier or broker operates in violation of any provision of this part (except as to the reasonableness of rates, fares, or charges and the discriminatory character thereof), or any rule, regulation, requirement, or order thereunder, or of any term or condition of any certificate or permit, the Commission or its duly authorized agent may apply to the district court of the United States for any district where such motor carrier or broker operates, for the enforcement of such

provision of this part, or of such rule, regulation, requirement, order, term, or condition; and such court shall have jurisdiction to enforce obedience thereto by a writ of injunction or by other process, mandatory or otherwise, restraining such carrier or broker, his or its officers, agents, employees, and representatives from further violation of such provision of this part or of such rule, regulation, requirement, order, term, or condition and enjoining upon it or them obedience thereto. [49 U.S.C. 327(b).]

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